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No. 84-2026

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October Term, 1984

A. L. Lockhart, Director, Arkansas
Department of Correction . . . . . .Petitioner

V.

Eugene Issac Pitts . . . . . Respondent/Cross-Petitioner

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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The petitioner, A. L. Lockhart, the Director of the Arkansas Department of Correction, has petitioned this Court for a review of the finding of the Eighth Circuit Court of Appeals that respondent's conviction was in violation of the United States Constitution. The opinion of the Eighth Circuit is reported at 752 F.2d 689 (8th Cir. 1985). The petition was filed on June 28, 1985. By letter of the clerk of this Court dated September 19, 1985, a response was requested.

The issue upon which the petitioner seeks review of the Eighth Circuit's ruling is the "death-qualified jury" issue left open by this Court in Witherspoon v. Illinois, 391 U.S. 510 (1968). No review of the Eighth Circuit's decision is necessary in this case because their conclusion is correct as a matter of federal constitutional law.

The Eighth Circuit's decision in this case was predicated upon the lead case of McCree v. Lockhart, styled Mabry v. Grigsby, 758 F.2d 226 (8th Cir. 1985). In that decision the court acknowledged that there was a split in the circuits on this issue. This Court has recently granted a petition for a writ of certiorari to review the McCree case. For all of the reasons expressed by the district court in Grigsby v. Mabry, 569 F.Supp. 1273 (E.D. Ark. 1983), and those expressed by the Eighth Circuit in Mabry v. Grigsby, 758 F.2d 226 (8th Cir. 1985), it is respectfully submitted that the fundamental constitutional requirements of a fair and impartial jury and cross-sectional representation require a summary affirmance of the Eighth Circuit's decision. No review is necessary. Nevertheless, acknowledging that this court has granted

certiorari in the lead case, respondant is aware that this court must ultimately determine the underlying issues involved.

Respectfully submitted,

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